



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket Number USCG-2013-0160]

RIN 1625-AA08

Special Local Regulation; Annual Swim around Key West, Atlantic Ocean and Gulf of Mexico; Key West, FL

AGENCY: Coast Guard, DHS.

ACTION: Temporary Final Rule.

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SUMMARY: The Coast Guard is establishing a special local regulation on the waters of the Atlantic Ocean and the Gulf of Mexico surrounding the island of Key West, Florida during the Annual Swim around Key West on June 8, 2013. The event entails a large number of participants who will begin at Smather's Beach and swim one full circle clockwise around the island of Key West, Florida. The special local regulation is necessary to provide for the safety of the spectators, participants, participating support vessels and kayaks, and other vessels and users of the waterway during the event. The special local regulation will consist of a moving area that will temporarily restrict vessel traffic in a portion of both the Atlantic Ocean and the Gulf of Mexico, and will prevent non-participant vessels

from entering, transiting through, anchoring in, or remaining within the area unless authorized by the Captain of the Port Key West or a designated representative.

DATES: This rule will be enforced from 7:30 a.m. until 3:30 p.m. on June 8, 2013.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type the docket number in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail Marine Science Technician First Class William Winegar, Sector Key West Prevention Department, U.S. Coast Guard; Telephone (305)292-8809, e-mail [William.G.Winegar@uscg.mil](mailto:William.G.Winegar@uscg.mil). If you have questions on viewing or submitting material to the docket, call Barbara Hairston, Program Manager, Docket Operations, telephone (202) 366-9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

DHS                      Department of Homeland Security

#### A. Regulatory History and Information

The Coast Guard is issuing this final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it only recently came to the attention that this event had been inadvertently excluded from the Coast Guard Seventh District Regulation of Recurring Marine Events at 33 C.F.R. 701; although an identical race, in the same month with a different sponsor had been so included. To ensure there is no confusion regarding the date of the race, or the enforcement of the regulation, and to ensure the safety of life on the Navigable Waters of the United States, publication of a NPRM would be impracticable, unnecessary, and contrary to the public interest.

#### B. Basis and Purpose

The legal basis for the rule is the Coast Guard's authority

to establish special local regulations: 33 U.S.C. 1233. The purpose of the rule is to ensure safety of life and property on navigable waters of the United States during the Annual Swim around Key West FL.

#### C. Discussion of the Final Rule

The special local regulation encompasses certain waters of the Atlantic Ocean and Gulf of Mexico. The special local regulation will be enforced on Saturday, June 8, 2013 from 7:30 a.m. until 3:30 p.m. The special local regulation consists of a moving race area where all persons and vessels, except those participating in the race or serving as safety vessels, are prohibited from entering, transiting through, anchoring in, or remaining within these areas unless authorized by the Captain of the Port Key West or a designated representative. The race area will commence at Smather's Beach at 7:30 a.m., transit West to the area offshore of Fort Zach State Park, North through Key West Harbor, East through Flemming Cut, South on Cow Key Channel and West back to origin. Safety vessels will precede the first participating swimmers and follow the last participating swimmers. This event poses significant risks to participants, spectators, and the boating public because of the large number of swimmers and recreational vessels that are expected in the area of the event. The special local regulation is necessary to

ensure the safety of participants, spectators, and vessels from the hazards associated with the event.

The special local regulation will be enforced from 7:30 a.m. to 3:30 p.m. on June 8, 2013. Persons and vessels who are neither participating in the race or serving as safety vessels may not enter, transit through, anchor in, or remain within the regulated area unless authorized by the Captain of the Port Key West or a designated representative.

Persons and vessels desiring to enter, transit through, anchor in, or remain within the regulated area may contact the Captain of the Port Key West by telephone at (305) 292-8727, or a designated representative via VHF radio on channel 16, to request authorization. If authorization to enter transit through, anchor in, or remain within regulated area is granted by the Captain of the Port Key West or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the Captain of the Port Key West or a designated representative. The Coast Guard will provide notice of the special local regulation by Local Notice to Mariners, Broadcast Notice to Mariners, and on-scene designated representatives.

#### D. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize

our analyses based on a number of these statutes or executive orders.

1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders.

The economic impact of this rule is not significant for the following reasons: (1) the rule will be enforced for a total of only 8 hours; (2) Non-participant persons and vessels may enter, transit through, anchor in, or remain within the regulated area during the enforcement period if authorized by the Captain of the Port Key West or a designated representative; (3) vessels not able to enter, transit through, anchor in, or remain within the regulated area without authorization from the Captain of the Port Key West or a designated representative may operate in the surrounding areas during the enforcement period; and (4) advance notification of the event will be made to the local maritime community via local notice to mariners, marine safety information bulletins, and broadcast notice to mariners.

## 2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601-612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule may affect the following entities, some of which may be small entities: owners or operators of vessels intending to enter, transit through, anchor in, or remain within the regulated area during the enforcement period. For the reasons discussed in Regulatory Planning and Review section above, this rule will not have a significant economic impact on a substantial number of small entities. If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see ADDRESSES) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

## 3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT, above.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain

#### 4. Collection of Information

This proposed rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520.).

#### 5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect



on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and determined that this rule does not have implications for federalism.

#### 6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the "For Further Information Contact" section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

#### 7. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

#### 8. Taking of Private Property

This rule would not cause a taking of private property or

otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

#### 9. Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

#### 10. Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

#### 11. Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

## 12. Energy Effects

This proposed rule is not a "significant energy action" under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

## 13. Technical Standards

This proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

## 14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves a special local regulation issued in conjunction with a regatta or marine parade. This rule is categorically excluded from further review under paragraph 34(h) of Figure 2-1 of the Commandant Instruction. A preliminary environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under ADDRESSES. We seek any comments or information that may lead to the discovery of a significant

environmental impact from this rule.

List of Subjects in 33 CFR Part 100

Marine Safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233

2. Add a temporary § 100.35T07-0160 to read as follows:

§ 100.35T07-0160 Special Local Regulation; Annual Swim around Key West, Atlantic Ocean and Gulf of Mexico; Key West, FL.

(a) Regulated Area. The following regulated area is established as a special local regulation. All waters within a moving zone, beginning at Smather's Beach in Key West, FL. The regulated area will move, West to the area offshore of Fort Zach State Park, North through Key West Harbor, East through Flemming Cut, South on Cow Key Channel and West back to origin. The center of the regulated area will at all times remain approximately 50 yards offshore of the island of Key West Florida; extend 50 yards in front of the lead safety vessel preceding the first race participants; extend 50 yards behind

the safety vessel trailing the last race participants; and at all times extend 100 yards on either side of the race participants and safety vessels.

(b) Definition. The term "designated representative" means Coast Guard Patrol Commanders, including Coast Guard coxswains, petty officers, and other officers operating Coast Guard vessels, and Federal, State, and local officers designated by or assisting the Captain of the Port Key West in the enforcement of the regulated area.

(c) Regulations.

(1) All persons and vessels, except authorized race participants or safety vessels, are prohibited from entering, transiting through, anchoring in, or remaining within the race area. Persons and vessels desiring to enter, transit through, anchor in, or remain within the race area, may contact the Captain of the Port Key West by telephone at (305) 292-8727, or a designated representative via VHF radio on channel 16, to request authorization. If authorization to enter, transit through, anchor in, or remain with the race area, is granted by the Captain of the Port Key West or a designated representative.

(2) The Coast Guard will provide notice of the regulated area by Marine Safety Information Bulletins, Local Notice to Mariners, Broadcast Notice to Mariners, and on-scene designated representatives.

(d) Enforcement Date. This rule will be enforced from 7:30 a.m. to 3:30 p.m. June 8, 2013.

Dated: May 8, 2013

A. S. Young, Sr.

Captain, U.S. Coast Guard

Captain of the Port Sector Key West

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Date: 06/04/2013]